

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA PACIFIC LEASING COMPANY,

Plaintiff,

vs.

MB AMERICA, INC.,

Defendant.

COPY

Original Received

AUG 31 2015

Clerk of the Trial Courts

Case No. 3AN-15-_____ CI

COMPLAINT

COMES NOW plaintiff Alaska Pacific Leasing Company ("Alaska Pacific"), by and through its counsel of record, the Law Offices of Royce & Brain, and for its Complaint against defendant MB America, Inc. ("MB"), hereby states and alleges as follows:

JURISDICTION & VENUE

1. Alaska Pacific is, and at all relevant times was, an Alaska corporation with its principal place of business in Anchorage, Alaska.
2. MB is, and at all relevant times was, a Nevada corporation with its headquarters located in Reno, Nevada.
3. This Court has jurisdiction pursuant to AS 22.10.020 and AS 45.45.750(a)(5).
4. Venue is proper in this Court because Alaska Pacific's claim arose in the Third Judicial District.

ALLEGATIONS COMMON TO ALL COUNTS

5. Alaska Pacific re-alleges the paragraphs above and further states and alleges as follows:

6. In August 2012, Alaska Pacific entered into a dealership agreement ("Agreement") with MB to become MB's exclusive authorized dealer in Alaska of certain excavation equipment produced by MB.

7. Excavation equipment produced by MB included crusher and screening buckets used in various construction applications.

8. In furtherance of the Agreement, MB furnished Alaska Pacific with certain of its excavation equipment in order that Alaska Pacific could demonstrate the equipment to potential buyers in the State of Alaska.

9. As outlined in the Agreement, Alaska Pacific promoted MB's products within the Alaska market by conducting demonstrations and offering MB products to its customer base.

10. During the effective term of the Agreement, MB sold Alaska Pacific the excavation equipment it had furnished for Alaska Pacific to demonstrate.

11. Alaska Pacific purchased the equipment from MB for its resale as the exclusive authorized dealer in Alaska.

12. MB was at all times aware that Alaska Pacific's purchase of the MB equipment was intended for Alaska Pacific's resale under the Agreement.

13. During the effective term of the Agreement, MB approached several Alaska Pacific customers without Alaska Pacific's knowledge in an attempt to directly sell MB equipment to those customers.

14. Alaska Pacific was unable to sell the equipment it purchased from MB for resale.

15. On or about December 16, 2013, MB notified Alaska Pacific that it was terminating the Agreement, leaving Alaska Pacific in possession of the equipment Alaska Pacific purchased from MB without the benefit of being an exclusive authorized dealer.

16. Despite demand being made, MB failed and/or refused to pay Alaska Pacific for the equipment that it purchased from MB or to reimburse Alaska Pacific for its expenses incurred in connection with the Agreement prior to MB's termination.

COUNT I - FRAUD/DECEPTIVE TRADE PRACTICES

[AS 45.50.471(b)(12)]

17. Alaska Pacific re-alleges the paragraphs above and further states and alleges as follows:

18. MB represented to Alaska Pacific that it was authorized, in its capacity as MB's exclusive dealer in Alaska, to resell the equipment Alaska Pacific purchased from MB under the Agreement.

19. MB knew that Alaska Pacific was purchasing the equipment in order that it could be resold under the Agreement.

20. Alaska Pacific purchased the MB equipment in reliance upon MB's representations.

21. By terminating the Agreement, MB denied Alaska Pacific the opportunity to resell the equipment as an authorized dealer.

22. MB's actions resulted in a financial gain for itself to Alaska Pacific's detriment.

23. MB knowingly employed deception, fraud, false promises and/or knowingly concealed or omitted material facts with the intent that Alaska Pacific would rely upon such misrepresentations.

24. Such misrepresentations were intentionally made by MB to induce Alaska Pacific to purchase the MB equipment.

25. As a result of MB's fraud/deceptive trade practices, Alaska Pacific has suffered damages in excess of \$100,000, the exact amount to be determined at trial.

COUNT II - BREACH OF COVENANT OF GOOD FAITH

26. Alaska Pacific re-alleges the paragraphs above and further states and alleges as follows:

27. MB breached the covenant of good faith and fair dealing by selling equipment to Alaska Pacific that it knew Alaska Pacific was acquiring for resale under the Agreement, terminating Alaska Pacific's dealership status, and refusing to repurchase the equipment from Alaska Pacific.

28. As a result of MB's breach, Alaska Pacific has suffered damages in excess of \$100,000, the exact amount to be determined at trial.

LAW OFFICES OF ROYCE & BRAIN
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Facsimile: (907) 276-2919

COUNT III – VIOLATION OF AS 45.45.700 – 45.45.790

29. Alaska Pacific re-allege the paragraphs above and further states and alleges as follows:

30. The Agreement is subject to the requirements of AS 45.45.700 – 45.45.790.

31. Upon termination of the Agreement, MB failed to pay Alaska Pacific for the equipment Alaska Pacific purchased from MB and which was still in Alaska Pacific's possession on the date of termination in violation of AS 45.45.710.

32. MB failed to make timely payments to Alaska Pacific to purchase the remaining MB equipment no later than three months after the date of termination of the Agreement in violation of AS 45.45.720.

29. After terminating the Agreement, MB failed to comply with AS 45.45.740, requiring it to reimburse Alaska Pacific for expenses incurred in performing as a dealer for MB prior to MB's termination.

30. As a result of MB's violation of AS 45.45.700 – 45.45.790, Alaska Pacific has suffered damages in excess of \$100,000, the exact amount to be determined at trial.


PRAYER FOR RELIEF

WHEREFORE, Alaska Pacific prays for the following relief:

- A. For judgment against MB for actual damages resulting from its fraud, breach of the covenant of good faith and fair dealing, and violation of AS 45.45.700 – 45.45.790, in an amount believed to exceed \$100,000, the exact amount to be determined at trial.
- B. For an award of treble damages pursuant to AS 45.50.531.
- C. For an award of costs, interest, and attorney's fees incurred in bringing and maintaining this action.
- D. For such other and further relief as this Court may deem just and proper under the circumstances and as authorized in AS 45.45.760.

LAW OFFICES OF ROYCE & BRAIN
Counsel for Plaintiff

DATED: 8-28-2015



Jason J. Ruedy
Alaska Bar Association No. 9911070

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

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AUG 11 2015

Clerk of the Trial Court

vs.

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CASE NO. _____ CI

**SUMMONS
AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: _____

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at (address): _____ within 20 days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:

Plaintiff's attorney or plaintiff (if unrepresented): _____

Address: _____

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.state.ak.us/courts/forms.htm, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

You are hereby given notice that this case has been assigned to Judge _____

(SEAL)

CLERK OF COURT

By: _____

Date _____

Deputy Clerk

The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 (2/06)(st.3)
SUMMONS

Civil Rules 4, 5, 12, 42(c), 55